

REMARKS

In the non-final Office Action mailed February 10, 2006 in the above-identified application all the claims were rejected except for claim 123 which was withdrawn from consideration. Claims 82-122 were rejected under 35 U.S.C. 112, first paragraph as failing to comply with the written description requirement because according to the Office Action the claimed limitation that “the lipid contained in the chamber(s) having one or more of the components of the group of a semi-volatile compound, aluminum, an oligomeric propylene component, and an oligomeric ethylene vinyl acetate in the specified concentrations before and after the container and lipid are autoclaved” is not supported in the disclosure as originally filed.

Claims 58-64, 66-73, 75, 76, 78-81 were rejected under 35 U.S.C. 102(e) as anticipated by Gustafsson (U.S. Pat. No. 6,007,529). According to the Office Action, Gustafsson discloses all the features of the claims except the limitation wherein the lipids have specified concentrations of specified compounds. However, these limitation were treated as intended use recitations which cannot be used to differentiate the claimed subject matter from the prior art.

Claims 58, 59, 65, 70, and 77 were rejected under 35 U.S.C. 102(e) as anticipated by Becker (U.S. Pat. No. 5,577,369). The Office Action again determined that Becker discloses all the features of the claims except the limitation wherein the lipids have specified concentrations of specified compounds. Again, these limitations were regarded as intended use recitations and not afforded any patentable significance in differentiating the claimed subject matter over the prior art.

Claims 62 and 74 were rejected under 35 U.S.C. 103(a) as obvious in view of Gustafsson. According to the Office Action, Gustafsson substantially discloses the invention as claimed but does not specifically state that there are four layers making up the container. The Office Action

held however that it would have been a matter of obvious design choice to modify the polymer taught in Gustafsson since at least two layers are taught and an example using three layers is provided in Gustafsson.

Claim 123 was withdrawn from consideration by the Office Action as being directed to an invention independent and distinct from the originally claimed invention since according to the Office Action, Applicants constructively elected the originally claimed invention by prosecution on the merits.

Turning now to the specific rejections, at the outset, Applicants would like to thank Examiner Bianco for the courteous telephone interview on April 26, 2006. During the interview all of the pending rejections were discussed. Regarding the claims rejected under section 112, Applicants pointed out that the limitation in question particularly the phrase “before and after the lipid and container . . . have been autoclaved” is not common to all the claims rejected under section 112, specifically claims 82-122. In addition, Applicants explained where support is provided in the specification for the specified concentrations of the specified compounds recited by the claims rejected under section 112. Furthermore, Applicants have amended claim 82 to strike the phrase “before and” as agreed to in the Interview.

Applicants also demonstrated that that the limitations deemed to be recitations of intended use are indeed positively recited in the claims and are structural features of the claimed invention; and since Gustafsson and Becker do not teach or suggest such features, claims 58-122 should be allowable. In response, the Examiner indicated a willingness to allow the claims as long as a new search of the chemical arts currently being conducted does not reveal any prior art which would anticipate or render obvious the claimed subject matter.

The Examiner also indicated that claims 58, 70, 94, and 106 should be amended to improve their clarity. Accordingly, Applicants have amended these claims in a manner believed to further clarify the claims and ensure consistency throughout all the claims. In addition, Applicants have amended claims 67-69 and 79-81 to further clarify the claims and to ensure consistency with the currently amended independent claims from which they depend.

For at least the reasons given above, Applicants submit that the subject matter of the claims is not taught or suggested by the cited references alone or in combination and as a result, the claims are in condition for allowance. Accordingly, Applicants respectfully request favorable reconsideration of all of the claims and that a Notice of Allowance be issued forthwith.

It is believed that no fees are due with this reply. However, if any fees should be required, the Commissioner is authorized to charge our Deposit Account No. 50/1039.

Respectfully submitted,



Michael D. Zaronias
Registration No. 54,564

Cook, Alex, McFarron, Manzo,
Cummings & Mehler, Ltd.
200 West Adams Street
Suite 2850
Chicago, Illinois 60606
312.236.8500